



## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Part 9**

**[Docket No. TTB-2020-0014]**

**[T.D. TTB-171; Ref: Notice No. 199]**

**RIN: 1513-AC65**

#### **Establishment of the Ulupalakua Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 70-acre “Ulupalakua” viticultural area (AVA) on the island of Maui, Hawaii. The Ulupalakua viticultural area is not located within, nor does it contain, any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202-453-1039, ext. 175.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background on Viticultural Areas**

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

#### *Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs

allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

### *Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

### **Ulupalakua AVA Petition**

TTB received a petition from Mark Beaman, winemaker at Maui Wines, proposing the establishment of the “Ulupalakua” AVA. The proposed AVA is

located within the privately-owned, 18,000-acre Ulupalakua Ranch on the island of Maui, Hawaii. The proposed AVA contains approximately 70 acres, with approximately 16 acres of vineyards. Although there is no winery within the boundary of the proposed AVA, grapes from the proposed AVA are made into wine at the Maui Wines facility, which is a short distance south of the proposed AVA. According to the petition, the distinguishing features of the proposed Ulupalakua AVA include its topography, soils, and climate.

The proposed Ulupalakua AVA contains a series of four distinct benches that are oriented to the southwest. The benches are gently sloped, with slope angles between 0 and 5 percent, and are separated by steeper erosional ravines. The petition states that the gentle slopes of the benches minimize the risk of erosion, facilitate safe agriculture, and allow vineyards planted on the benches to receive uniform amounts of sunlight, rainfall, and temperature-moderating cloud cover. By contrast, the surrounding regions all contain steeper slopes. The petition notes that the regions to the north, west, and east of the proposed AVA have average slope angles of 15 to 17 percent. The petition also notes that the regions to the north and west of the proposed AVA contain more erosional features, such as ravines, which are less suitable for viticulture than gently sloping benches. Furthermore, the region to the south of the proposed AVA contains rugged, exposed volcanic rocks that are not suitable for viticulture.

The soils of the proposed Ulupalakua AVA formed from the erosion of ancient alkali lava flows from Mt. Haleakala. Kula loam makes up 80 percent of the soil of the proposed AVA and is derived from weathered basic igneous rocks. The remaining 20 percent of the soils of the proposed AVA are comprised of the lo series, which are silt loams that gradually acquire more clay deeper in the soils. According to the petition, the soils of the proposed AVA are fertile enough

to produce healthy vines and fruit without promoting excessive vine and leaf growth. Additionally, the uniformity of the soils within the proposed AVA results in a greater consistency in growing conditions for vineyards than can be found in the surrounding regions. To the south of the proposed AVA, the soil changes to Kula very rocky loam, which consists of very large volcanic rocks and boulders which would not be suitable for vineyards. The same Kula soil found within the proposed AVA is also found to the west, but the petition notes that the topsoil west of the proposed AVA has been scoured by erosion and would be thinner and not as suitable for viticulture. The petition did not provide information on the soils to the north and east of the proposed AVA.

Within the proposed Ulupalakua AVA, annual temperatures are moderate and do not drop below 50 degrees Fahrenheit (F), which is generally considered to be the minimum temperature required for grape vine growth and fruit development. The difference between the average high and low temperatures each month in the proposed AVA is typically 20 degrees or less. The proposed AVA receives an average of 30.7 inches of rainfall a year and less than 2 inches per month in the harvest months of July and August. According to the petition, the low rainfall amounts during harvest reduce the risk of mildew and rot, while the mild temperatures protect ripening fruit against sunburn and heat stress.

The petition states that the proposed AVA's climate is influenced by its proximity to Mt. Haleakala. To the north of the proposed Ulupalakua AVA, on the higher slopes of the mountain, annual temperatures are cooler and temperatures drop below 50 degrees F. Because moist air moves from east to west over the mountain, regions to the east of the proposed AVA typically receive higher average annual rainfall amounts, while elevations to the west of the proposed AVA have less rainfall. The petition did not include temperature data for

locations to the east, west, or south of the proposed AVA, nor did it include precipitation data for regions to the north and south of the proposed AVA.

### **Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 199 in the **Federal Register** on November 10, 2020 (85 FR 71726), proposing to establish the Ulupalakua AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 199. In Notice No. 199, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on January 11, 2021.

In response to Notice No. 199, TTB received one comment. However, the comment did not contain information related to the proposed AVA or to the AVA program in general, and was not posted to the public docket.

### **TTB Determination**

After careful review of the petition, TTB finds that the evidence provided by the petitioner supports the establishment of the Ulupalakua AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the “Ulupalakua” AVA in Hawaii, effective 30 days from the publication date of this document.

### **Boundary Description**

See the narrative description of the boundary of the Ulupalakua AVA in the regulatory text published at the end of this final rule.

## **Maps**

The petitioner provided the required maps, and they are listed below in the regulatory text. The Ulupalakua AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at <https://www.ttb.gov/wine/ava-map-explorer>.

## **Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of the Ulupalakua AVA, its name, "Ulupalakua," will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulations clarifies this point. Consequently, wine bottlers using the name "Ulupalakua" in a brand name, including a trademark, or in another label reference to the origin of the wine, will

have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Ulupalakua AVA will not affect any existing AVA. The establishment of the Ulupalakua AVA will allow vintners to use “Ulupalakua” as an appellation of origin for wines made primarily from grapes grown within the Ulupalakua AVA if the wines meet the eligibility requirements for the appellation.

### **Regulatory Flexibility Act**

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor’s efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

### **Executive Order 12866**

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

### **Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

### **List of Subjects in 27 CFR Part 9**

Wine.

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:



## **PART 9—AMERICAN VITICULTURAL AREAS**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

### **Subpart C—Approved American Viticultural Areas**

2. Subpart C is amended by adding § 9.278 to read as follows:

#### **§ 9.278 Ulupalakua AVA.**

(a) *Name.* The name of the viticultural area described in this section is “Ulupalakua”. For purposes of part 4 of this chapter, “Ulupalakua” is a term of viticultural significance.

(b) *Approved maps.* The United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Ulupalakua viticultural area is titled “Makena, Hawaii, 1983.”

(c) *Boundary.* The Ulupalakua viticultural area is located on the island of Maui, in Hawaii. The boundary of the Ulupalakua viticultural area is as described in paragraphs (c)(1) through (6) of this section:

(1) The beginning point is on the Makena, Hawaii, map at the intersection of an unnamed, light-duty road known locally as State Highway 37 and the northernmost unnamed, unimproved road in the Palauea land division (a land division is known as an “ahupua’a” in Hawaii). From the beginning point, proceed south along State Highway 37 to the next unnamed, unimproved road in the Palauea land division; then

(2) Proceed west in a straight line for approximately 2,700 feet to the 1,560-foot elevation contour; then

(3) Proceed north along the 1,560-foot elevation contour to the northern boundary of the Palauea land division; then

(4) Proceed east along the northern boundary of the Palauea land division to the 1,800-foot elevation contour; then

(5) Proceed south along the 1,800-foot elevation contour for approximately 400 feet to the point where the 1,800-foot elevation contour intersects with an imaginary line drawn from the terminus of the northernmost unnamed, unimproved road in the Palauea land division; then

(6) Proceed east in a straight line for approximately 800 feet, returning to the beginning point.

Signed: June 21, 2021.

**Mary G. Ryan,**

*Administrator.*

Approved: June 21, 2021.

**Timothy E. Skud,**

*Deputy Assistant Secretary  
(Tax, Trade, and Tariff Policy).*

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